

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH L NICKOLS,

Plaintiff,

v.

STEVE MANSFIELD, JIM PEA, JACK  
HASKINS, JULIE WEST, TERRY  
WILSON,

Defendants.

CASE NO. C13-5942 BHS-JRC

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO COMPEL  
DISCOVERY

This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Before the Court is defendants' motion to compel discovery (Dkt. 41). Plaintiff did not respond to the motion. Defendants ask the Court to compel plaintiff to answer deposition questions concerning plaintiff's conversion from one religious faith to another (*id.*). Plaintiff refused to answer the question citing the First Amendment freedom of religion clause (Dkt. 42,

Exhibit 6, ECF pp. 30-31). Plaintiff has also allegedly refused to answer interrogatories or requests for production (Dkt. 41).

This action involves claims including defendants allegedly denying plaintiff his religious rights (Dkt. 4, page 4). Thus, plaintiff's religious beliefs, his practice of religion, and his conversion from one faith to another are all relevant areas of inquiry. During the deposition itself the parties met and conferred regarding this issue and the following conversation was transcribed:

Q. And what were the circumstances of you converting to Muslim in the year 2000?

A. I believe that question about my faith and my reason for conversion is irrelevant.

Q. It actually is relevant because you have a claim based on your religion. So are you refusing to answer it?

A. Yes. Under the First Amendment I have a right to practice any religion, and I don't have to disclose to why I practice that religion.

Q. Well, part of your claim for religion requires you to make a showing that it's a sincerely held belief and so I am permitted to inquire about the circumstances of when you acquired those beliefs. And I will tell you that if I have to move the court to compel you to come back here, it can sanction you and there may be penalties for that so I would prefer not to have to do that?

A. I fully understand your position, and I still hold my same grounds as refusing to answer that question.

Q. Have you ever attended a mosque?

A. I refuse to answer that question.

(Dkt. 42, Exhibit 6, ECF p. 30-31).

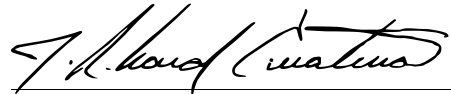
Fed. R. Civ. P. 37(a)(1) requires a person moving to compel discovery to "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." *See* Fed. R. Civ. P. 37(a)(1). While defendants did not provide a separate certificate showing compliance with Fed. R. Civ. P. 37, the excerpt from the deposition shows counsel making a

1 good faith effort in a face to face meeting to resolve the discovery dispute regarding the  
2 deposition.

3 The Court grants the motion to compel discovery regarding the deposition questions. If  
4 defendants choose to take an additional deposition of plaintiff, the Court orders that plaintiff  
5 answer questions regarding his conversion from one religion to another and to answer the  
6 questions he refused to answer that were set forth in (Dkt. 42- Exhibit 6, ECF p. 30-31).

7 The record does not reflect that the parties met or conferred after plaintiff did not provide  
8 the written discovery requests. Pursuant to Fed. R. Civ. P. 37(a)(1), the Court denies this motion  
9 to compel without prejudice.

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11 Dated this 9<sup>th</sup> day of June, 2014.

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14 J. Richard Creatura  
United States Magistrate Judge